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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,353	04/13/2007	John C. Evans	2765/205US	8084
23638 7590 05/11/2009 ADAMS INTELLECTUAL PROPERTY LAW, P.A. Suite 2350 Charlotte Plaza 201 South College Street CHARLOTTE, NC 28244				
EXAMINER				
LEWIS, KIM M				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
05/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,353

Applicant(s)

EVANS ET AL.

Examiner

Kim M. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-9 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-9 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on 1/23/09 has been received and made of record. As requested, claims 1-5, 10-13 and 17-20 have been cancelled.
2. Claims 6-9 and 14-16 are pending in the instant application.

Allowable Subject Matter

3. The indicated allowability of claims 6-9 and 14-16 is withdrawn in view of the newly discovered reference(s) to Lee. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6-9 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2007/0043312 ("Lee") in view of U.S. Patent Application Publication No. 2005/0267392 ("Evans").

As regards claims 6-9 and 14-16, Lee substantially discloses the invention as claimed. More specifically, Lee discloses a splint product for being dispensed in predetermined lengths comprising an elongate sleeve (constituted by member 2) formed of moisture impervious material (note para. 0016), an elongate medical material (constituted by member 6), a substrate (constituted by member 8), a reactive system (note para 0045), a soft, flexible tubular wrapping constructed from a knitted fabric (note para. 0062) that has an elastic yarn incorporated therein (para 0047), a means for resealing the sleeve (note members 5 and 7 in Fig. 4). Additionally disclosed, either explicitly stated or implied, is the functional and/or intended use recitations.

Lee fails to teach the product is in roll form, that the wrapping is rib-knitted fabric constructed from the synthetic yarns of acrylic, polyester and polypropylene, that wrapping is circular knitted to define the tube, with the ribs extending longitudinally along the length, or circular-knitted with the ribs extending radially around the periphery of the tube.

Evans, however, teaches that it is known to dispense splint bandaging products in roll form and to construct the tubular wrappings of splint bandaging products from polypropylene. In view of Evans, it would have been an obvious matter of design choice to one having ordinary skill in the art to dispense the product of Lee in roll form since the Applicant has not disclosed that the roll form solves any stated problem or is for any particular purpose, and it appears that the invention would perform equally well in other forms such as the stacked form shown in Lee.

As to the orientation of the ribs, either longitudinally along the length of the tube or radially around the periphery of the tube, the examiner contends that the orientation of the ribs are an obvious matter of design choice to one having skill in the art since the applicant has not disclosed that the orientation of the ribs solve any stated problem or is for any particular purpose.

Whether these particulars solve any particular problem or produce any unexpected result, I must conclude that they are merely matters of engineering design choice, and thus do not serve to patentably distinguish the claimed invention over the prior art. *In re Kuhle*, 526 F.2d 53, 188 USPQ 7 (CCPA 1975).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure in that they show splint products with tubular wrappings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-

4796. The examiner can normally be reached on Monday to Wednesday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/
Primary Examiner
Art Unit 3772

kml
May 10, 2009